matter because there is no support in the application ad filed for a narrower range. The specification only describes a pore size that "ranges from 0.4 to 40 microns.". The previous amendment added new limitation of pore size range of 0.4 to 20 microns. The newly added limitation to claim 1 by narrowing the pore size is, of course, within the original range, 04 to 40 microns. The larger pore size specified in the specification includes the smaller pore size in the amendment claim. Therefore, the specification did support the narrower amendment.

Furthermore, the applicant cited your MPEP stated in 2163.06 and the dicta of courts to support the argument. However, the examiner did not respond to the evidence. Therefore, the conclusion made by the examiner would be not convincible.

2. The Office Advisory Action also mentioned that "the amendment filed does not change the basis for the written description rejection that was maintained in the office action mailed December 16, 2005." The written description requirement of §112, is set as: the specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains or with which it is most nearly connected, to make and use the same, and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The applicant has mentioned published papers as well as patents to support that the application could let "any person skilled in the art to make and use the same." According to those prior patents and published research papers, any person skilled in the art should be aware of that the MSC are large in size, plastic adherence and to be obtained

from bone marrow (iliac crest, femora, tibiae, spine, rib or other medullary spaces) and embryonic yolk sac, placenta, umbilical cord, fetal and adolescent skin, and blood.

3. The Office Advisory Action also mentioned that "the limitation of small-sized cells in terms of the cells that will pass through the pores does not limit the other cells in addition to MSC that will not pass through the pores." All limitation the claim should be read as a whole. The step 2 of the claim also includes that "wherein the mesenchymal stem cells retain and adhere onto the upper plate, and the other small-sized cells pass through the pores to the lower plate base."

In other words, this is exactly the key point of the invention, "the mesenchymal stem cells retain and adhere onto the upper plate, and the other small-sized cells pass through the pores to the lower plate base." The MSC is usually larger in size and has the adherence property. Therefore, it will retain and adhere onto the upper plate. The other cells are usually smaller in size and do not have the adherence property. Therefore, they will pass through the pores to the lower plate base.

In sum, this application combining the characteristics of large size and plastic adherence can result in a "novel, simple, effective, and economic method of isolating MSCs." [0023] As mentioned previously, this application is not perfect, but it does help in the MSC recovering, as the application stated "In one preferred embodiment, cell populations having greater than 98% of human MSCs can be obtained in accordance with the method of the invention, and such isolated MSCs can proliferate without differentiation and reach confluence even after 12 passages." [0011]

4. Narrowing claim within the original scope shall not constitute a new matter. Furthermore, the MSC has the characteristics of large size and plastic adherence, which are supported by many published articles as well patents. This application is the first one to combine the two features together and to improve the isolation of MSCs. Accordingly, this application now should be placed in condition of allowance. An early Notice to this effect is respectfully expected.

Respectfully submitted:

By: Shih-Chieh Hung

Shih-Chieh Hung
886-2-28757557 ext 118 (voice)
886-2-28265164 (fax)
hungsc@vghtpe.gov.tw(email)
No 201 Shih-Pai Rd Section II,
Taipei-Veterans General Hospital,
Taipei, Taiwan, R. O. C.